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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,154

04/27/2005

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01/09/2008

EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Office Action Summary</b></p>	<p><b>Application No.</b></p> <p>10/533,154</p>	<p><b>Applicant(s)</b></p> <p>HANSPETER, STEFFEN</p>	
	<p><b>Examiner</b></p> <p>Christopher P. Bruenjes</p>	<p><b>Art Unit</b></p> <p>1794</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference characters not mentioned in the description: 10. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 1 and 2 are objected to because of the following informalities: the claims are not written in proper US standards. In particular, the claims should not include "characterized to be made out of", "whereby, with the means of", and "characterized by the fact". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Although it is permissible to have reference characters in the claims, the claims must be defined without the use of the drawings. The current claims mention "zone (8)", "zone (9)", and "band (9)" in a manner attempting to include the specific structure pictured in the figures which is impermissible.

Furthermore in claim 1, it is vague and indefinite whether the laminates, the laminated film, or the food grade silicone or another gel with similar properties contains the anti-microbial food grade agent, hydrobenzoic acid and ethylene adsorbing agent. Also the limitation "or another gel with similar properties" is vague and indefinite because it is not clear what properties would render a gel similar to food grade silicone. It is not clear how food grade silicon "helps".

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niwa (USPN 5,697,203) in view of Potaczek (USPN 4,356,819).

Niwa teaches a valve equipped laminated film in the form of a tray (Figure 20). Note the limitation that the film is for microwave cooking is an intended use limitation that is given weight only insofar as the structure it provides. The laminate of Niwa could be microwaved because it does not contain metals. The film contains at least two bonded laminates (any of the layer 24 within film 7 of Figure 17 alone or combined with the film forming the bottom of the tray. The laminates form a conduct or tube by means of a food grade silicone (col.14, 1.12-19). The tray further comprises an ethylene adsorbing agent that is also anti-microbial (col.16, 1.21-28). The tray further contains aligned slits in zones where the needles are punctured through the film 7 and the silicone layers self-seal but the slits remain in the PET layers (reference number 24).

Niwa fails to teach that the tray further comprises an additional antimicrobial such as hydrobenzoic acid. However, Niwa teaches that the tray is used for food packaging and that anti-bacterial compositions are useful so it would be obvious to one having ordinary skill in the art at the time Applicant's invention was made to add known anti-bacterial compositions to the

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food packaging to prevent bacteria growth. Potaczek teaches that Nipastat is a commercially known anti-microbial made from hydrobenzoic acid. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use hydrobenzoic acid as anti-microbial in the tray of Niwa, because it is a commercially known anti-microbial as taught by Potaczek and Niwa teaches the desire to have the food packaging be anti-microbial.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barthels et al (US 4,134,535); Domke (US 5,326,176).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher P Bruenjes  
Examiner  
Art Unit 1794

CPB  
January 3, 2008